

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 2103 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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STATE OF GUJARAT - Petitioner(s)
Versus
FULIBEN BABABHAI & ORS. - Respondent(s)

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Appearance :

SHRI A.Y. KOGJE, ASST. OVERNMENT PLEADER for Petitioner(s).
SHRI NITIN M. AMIN for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/11/2006

ORAL JUDGMENT

1. The parties are finally heard.

2. In the proceedings commenced under the

provisions of the Gujarat Agricultural Land Ceiling Act, 1960, on an earlier occasion, the matter went upto the Gujarat Revenue Tribunal, which remanded the same to the Mamlatdar for decision afresh. The Mamlatdar, this time, *vide* Order dated 7th June, 1979, in Ceiling Case No.4/23/1976 held in favour of the present respondents. It appears that being aggrieved by the said order, the State Government took up the matter in Ceiling Revision Case No.33/1986 before the Deputy Collector (Land Reforms), Ahmedabad, who, by his Order dated 30th September, 1986, held in favour of the State and observed that the evidence brought before the Mamlatdar was not good enough or sufficient enough to record the findings that the wife of the holder was living separately, she was holding the land separately and she was also paying the revenue separately. He, accordingly, held that the land could be clubbed with the holding of the present respondents.

Being aggrieved by the said order, the holder, Bhavsinghbhai (since deceased), filed Revision No.TEN/BA/1093/86, the matter was heard by the learned Member of the Gujarat Revenue Tribunal, who, by his Order dated 18th November, 1988, set aside the order passed by the Deputy Collector, restored the order passed by the

Mamlatdar and held that the land belonging to the wife could not be clubbed with the land of the husband. The State, being aggrieved by the order passed by the Revenue Tribunal, is before this Court.

3. Shri Kogje, learned Assistant Government Pleader appearing for the State, submitted that the Revenue Tribunal had no jurisdiction to reappraise the evidence and set aside the findings of facts recorded by the learned Deputy Collector. Placing reliance upon Section 38, he submits that the Revisional Court could interfere in the matter only when, (i) the order of the Collector was contrary to law; (ii) the Collector failed to determine some material issue of law; or, (iii) there was a substantial defect in following the procedure provided by the Act, which has resulted in miscarriage of justice.

4. On being asked that whether the Collector can reappraise the entire evidence and record is independent finding without first holding that the findings recorded by the learned Mamlatdar were perverse or that there was no evidence to support the said findings, the learned Counsel for the State submitted that the Collector has powers to reappraise the entire

evidence and record his own findings.

5. Section 37 of the Gujarat Agricultural Lands Ceiling Act, 1960, which defines powers of the Collector in a revision, reads as under:

"37. Collector's power of revision. - Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the State Government, at any time, -

(a) call for the period of any inquiry of the proceedings of any Mamlatdar or of the Tribunal other than the proceedings of an award for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal as the case may be, and

(b) pass such order thereon as he deems fit:

Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

The Collector would be entitled to call for the records of any inquiry of the proceedings of any

Mamlatdar or of the Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to regularity of the proceedings of such Mamlatdar or Tribunal as the case may be.

6. In the present matter, the Collector did not hold that there was no evidence on record to support the findings recorded by the Mamlatdar. In the revision, if the Collector was to reappraise the evidence or examine legality or propriety of the order passed by the Mamlatdar or Tribunal, then, he was first to record that the findings recorded by the subordinate Tribunal, that is, the Mamlatdar, were *per se* illegal, contrary to record and perverse.

7. Availability of evidence to support a finding would put a ban against the order of Revisional Court in reappraising the evidence. The Revisional Court would be entitled to interfere with the findings of facts only if the Revisional Court records that there was no evidence to support the finding or the subordinate Tribunal has read something in the evidence, which, in fact, is not there.

8. In the present case, from the order passed by

the Mamlatdar, so also the learned Tribunal, it clearly appears that there was sufficient evidence to come to the conclusion and record findings, which the Mamlatdar had recorded. Possibility of any other view would not provide a jurisdictional foundation in favour of the Revisional Court to reappreciate the entire evidence.

9. If the Collector had no jurisdiction to set aside the finding of fact except in a case of perversity, then, the order of the Collector could always be branded as an order which is contrary to law and if that be so, the Tribunal would have jurisdiction under Section 38(1) (a) of the 1960 Act.

10. It was then contended that the wife could be deemed to be a member of the husband's joint family and under the circumstances, her entire holding would be clubbed with the husband's holding.

11. Section 2(16) of the 1960 Act reads as under:

"(16) 'Joint family' means a undivided Hindu family and in the case of other persons a group or unit the members of which by custom or usage are joint in estate or residence;"

A perusal of the definition and its legal

understanding would clearly provide that a joint family would be an undivided Hindu family. A joint family must be an undivided family and if there is any division, then, it would not be a joint family. Though Shri Kogje, learned Counsel for the petitioner submitted that the persons, who would be deemed to be residing jointly by custom or usage, would also be deemed to be a joint family, but, in the opinion of this Court, the argument cannot be accepted because that is the latter part of the definition and not the first one. The latter part of the definition can clearly be separated from the first part, and the definition of the joint family can be read into two parts: (i) joint family means an undivided Hindu family; and, (ii) joint family means in the case of other persons, a group or unit the members of which by custom or usage are joint in estate or residence. It is nobody's case that all the persons are living jointly under some custom or usage and if that is not the case of the either party, then, the first part of the definition would cover the entire matter.

12. Once it is shown that there had been division of the property and the parties are not living jointly, then, the definition of joint family would not be applicable.

13. Taking into consideration the totality of the circumstances, I am of the view that the Tribunal was not unjustified in setting aside the order passed by the Deputy Collector. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

*kamlesh**

[R.S.Garg, J.]